

**SUPREME COURT MINUTES  
FRIDAY, JANUARY 8, 1999  
SAN FRANCISCO, CALIFORNIA**

The Supreme Court of California convened in the courtroom of the Earl Warren Building, 350 McAllister Street, Fourth Floor, San Francisco, California, on January 8, 1999, at 10:00 a.m.

Present: Chief Justice Ronald M. George, presiding, and Associate Justices Mosk, Kennard, Baxter, Werdegard, Chin, and Brown.

Officers present: Robert Wandruff, Clerk; Walter Grabowski and Harry Kinney, Bailiffs.

**COURTROOM DEDICATION CEREMONY**

**Chief Justice George:**

Good morning, and welcome to this special session of the California Supreme Court. On behalf of the entire court, I want to say that it is with great pleasure that we return to our historic home. Oral argument was first held in this location in 1923, and last held here in 1989, when the court was compelled to relocate due to the damage suffered from the Loma Prieta earthquake. Of the justices presently on the court, only two, Associate Justices Stanley Mosk and Joyce Kennard, previously have sat on the bench in this courtroom — although some of us here today have had the honor of appearing in this courtroom as advocates.

The courtroom you see today is very different from the one left behind in 1989. The opinion of the court about our newly restored location is unanimous. We are thrilled and excited by the renovations that have taken place in the entire building, and particularly with the changes in the courtroom, which has been restored to its original glory. There are two major changes. First is the mural you see behind us. The original work was nowhere to be found, but in the end that may well have been a fortunate circumstance. It permitted us to have Willard Dixon, a noted artist from Marin County, create for us a mural that not only beautifully symbolizes the California we all serve, but also exhibits the balance and breadth of vision we all hope to bring to our role as justices on the court.

The second change is the technology embedded in the courtroom that allows us to broadcast to locations throughout the building and offers computer access and modern recording facilities.

There are so many friends of the court here today that I cannot acknowledge them all or we would be unable to begin oral argument on time at 11 this morning. Speaking of beginning on time, I want to acknowledge Elliott Williams, who called the court to order. Elliott is a retired former bailiff who served the court for many years — including opening our sessions countless times.

There are, however, a few more individuals whom I would like to single out among the many luminaries in the courtroom today. First, retired Court of Appeal Justice Elwood Lui, President of the Supreme Court Historical Society, which focuses on ensuring that the history of the court is preserved and illuminated for future generations. The historical society graciously has sponsored a reception that will be held in the ceremonial chambers outside the courtroom and in the adjacent hallway, following this morning's oral argument session. Those of you in the courtroom and in the auditorium to which these proceedings are being transmitted are invited to tour the courthouse after these proceedings and to return for the reception at noon.

I also am pleased to welcome one of our neighbors in the Civic Center, Mayor Willie Brown. Earlier this week, San Francisco's magnificent City Hall reopened. The refurbishing of these important public buildings is part of a revitalization of the Civic Center area as one of the outstanding government centers in the world. We are proud to be part of this historic enterprise.

I also want to acknowledge representatives who are here today from the families of two former Chief Justices. First, Ms. Ruth Searls, the great-granddaughter of Niles Searls, Chief Justice of California from 1887 to 1889. She generously has donated to the court important documents and books from her great-grandfather's collection.

Next, we are most fortunate as well to have among our guests in the courtroom and in the auditorium, representatives with us today from the family of the late Chief Justice of the United States Supreme Court and former Governor of California, Earl Warren, for whom this building was named many years ago. The Warren family has donated to the court furniture and papers used by Earl Warren as Governor and as Chief Justice. Material from that collection will be on display in the near future.

And finally, I want to introduce the former members of the court who are with us here today: William P. Clark, Jr., who served from 1973 to 1981, Cruz Reynoso, who sat from 1982 to 1987, Joseph R. Grodin, also from 1982 to 1987, Edward A. Panelli, Associate Justice from 1985 to 1994, and Armand Arabian, who served from 1990 to 1996. In addition, we are very pleased to have with us today Mrs. Rosabelle Tobriner and Mrs. Fran Newman, whose husbands served with great distinction on the court as well.

Our first speaker today is also a very distinguished former member of the Supreme Court — my predecessor, former Chief Justice Malcolm M. Lucas. Chief Justice Lucas was the last Chief Justice to serve in this courthouse before the earthquake, and I understand that he had no doubts about the wisdom of moving out immediately when he returned to his chambers and found one of the large light fixtures smashed on the floor near his desk. Chief Justice Lucas also was still serving on the court when ground was broken for this project — and it is most appropriate to have him here to help dedicate and celebrate the finished product.

Chief Justice Lucas joined the court as an associate justice in 1984 and became Chief Justice in 1987. I had the pleasure of working with him after my appointment to the court in 1991, both at the court itself and on the Judicial Council. His contributions to the body of law that guides us today, and to bringing the administration of justice in our state into the next century, are legion. Perhaps one of the best known is his appointment of the Commission on the Future of the California Courts, which produced a comprehensive report on the future of the justice system in our state. Recognizing his close ties to the history and development of the court, his leadership of not only the court but the entire judicial system, during his tenure as Chief Justice, and his forward-looking views and actions, we are fortunate to have him with us today.

### **Chief Justice Lucas:**

Reminiscence -- a spoken or written account of what one remembers; or thinking or talking about past events or experiences.

So, in a sense this will be a series of seismic reminiscences. Loma Prieta day, October 17, 1989, started out to be a pretty good day. The World Series of Baseball was on and was to be played in San Francisco. All was well with the world. That night, the members of the California Supreme Court were to be the guests of the Queen's Bench at the Annual Dinner honoring the Supreme Court at the Meridian Hotel, and at least Ed Panelli and I were going because we were

being driven there by our fullback bailiff, Elliott Williams. Elliott was to pick me up first at my apartment on Russian Hill and then we would pick up Justice Panelli at his condominium near Coit Tower and head for the hotel.

A shower and a change of clothes were to precede me being picked up. But a dramatic and unmistakable jarring and shaking interrupted this routine. My first thought was -- "Well, that was severe, but it wasn't as bad as the '33 quake in Long Beach which I survived, so life goes on." A brief inspection from the balcony of my apartment showed no obvious damage, though there was no electricity. The phones were still working at that time, at least, and I called Ed Panelli and reconfirmed that we would still show the flag at the Queen's Bench function.

Elliott Williams came, expressing some concern over what he had seen coming to pick me up, but we pressed on and picked up Justice Panelli in front of his condo. We proceeded down to the Embarcadero. There, disquieting things began to appear. For example, an underground water main was now above ground and spouting water. We came to Mission Street and attempted to turn onto it, but to no avail, as traffic seemed blocked. Ed and I decided to get out and walk, asking Elliott to meet us at the hotel when he could.

We started to walk along Mission Street toward the hotel. The sidewalks were covered with broken glass from shattered windows. It crunched under our feet. Masonry and cornices had fallen from the tops of buildings and smashed onto the sidewalks, and onto the occasional parked automobile. Some faces showed signs of shock -- ashen faces with saucer eyes.

We then saw an example of courage and fortitude, but, also, perhaps a realization of one of life's Walter Mitty type dreams. Remember, there was no electricity and therefore, among other things, no stop lights at intersections, yet a mass of frantic traffic was attempting to move. There, in the middle of an intersection stood a gas station attendant complete with Union Oil Company medallion on his shirt, directing traffic -- making order out of chaos. AND EVERYONE WAS WAITING HIS OR HER TURN!

We walked on until we reached the hotel, with "Let's have a drink" uppermost in our minds, only to be told that the hotel was admitting no one and that the table at the banquet that was to seat the members of the Supreme Court had received a direct hit from the chandeliers above.

Elliott had finally managed to catch up to us, and hunger had set in so we went to Lorenzo Patronis' restaurant, the North Beach. The bartender and one person were there behind locked doors, with no electricity, just three candles on the bar. We were admitted, but there was no food, as there was no electricity or gas. There was a Titanic-type feeling about it all.

Ed and I might have split up about this time, as I went to the State Building to see what had occurred in the quake. A glance at the exterior could have created optimism, but gloom carried the day once the inside was seen. Hollow tile bricks in the stairwell walls had turned at crazy angles. Bookshelves had come down, pitching out their heavy contents.

I saw Lieutenant Governor McCarthy there. He was the acting Governor as Governor George Deukmejian was in Germany on a trade mission. McCarthy and others were commencing to set up a command post in the State Police quarters. I saw, then, from the activity charts on the walls, the seriousness of the situation. Fires in the Marina area, water mains ruptured, and the Bay Bridge damaged sufficiently to preclude traffic on it. It was only the next day that I learned that Alba Witkin had been driving Bernie to the same dinner at the Queen's Bench, when a violent shudder occurred on the bridge and a slab of the road broke away only 400 yards ahead. Showing great resolve Alba eventually turned the car around on the bridge and headed back to Berkeley. Bernie's luck held that day!

Suffice it to say that the court never returned to this building until now, almost 10 years later. The building was in such a potentially dangerous condition, that we could only allow court members and staff to go separately and individually into the building to get their personal possessions and for no more than 10 minutes.

Then began a long and dreary period for all of the staff and members of the Court. For 16 months -- From October 17, 1989, to February 4, 1991, we were in limbo. Limbo may be defined as working in the old State Building on Golden Gate. We had to evict the Administrative Office of the Courts, and double up in a very inadequate plain vanilla building, haggard and aged well beyond its years. Ultimately it was torn down to make way for this new complex, and not a minute too soon.

We would have had to wait a much longer period than 16 months for new quarters, except that we had discovered, long before the quake, that 350 McAllister was a potentially dangerous building. Only when we hired our own engineering firm to inspect the building were we able finally to convince the State of California that we MUST be placed in another building that was safe. Telling

this to the state was comparable to telling a father that his daughter was a cocaine dealer -- it was neither welcomed nor believed. But finally, it came about that, before the quake we had arranged to enter the Marathon Plaza Building. It still took 16 months to build out the Marathon Plaza Building, including a beautiful two-story courtroom, and many other necessary things. I want to again thank every staff member and member of the court for their courage and stamina during this very difficult time. We went into the Marathon Plaza Building in February, 1991, as I have said. It was all we expected, thanks to so much work done by so many, particularly Bob Wandruff and our own construction expert engineer, Bill Lukes. I want to thank all of them.

The contract for the San Francisco Civic Center Project (which included the renovation of the 350 McAllister Building) was awarded to HSH Design/Build in August, 1994.

Groundbreaking and the start of construction was April 1996, the month that I retired from the court, coincidentally.

I understand that the historical Chief Justice's chambers will be preserved in its original state. This, I suppose means that the dent in the ceiling caused by the cork in a champagne bottle opened by Chief Justice Gibson will remain, as well as the lilliputian restroom with ancient water closet with the name "John Company" on it. I guess I was the last Chief Justice to use those quarters as a judicial workspace, and now they will be used only for historical and ceremonial purposes. Time marches on.

I congratulate this distinguished and outstanding court on its new beginning in this historical building. Every day you are here you will be writing and making history. May God bless and keep each of you.

Thank you for allowing me the honor of addressing you today.

**Chief Justice George:**

Thank you, Chief Justice Lucas. Our next speaker today is Associate Justice Stanley Mosk. He has served on the court since September 1964, for what is thus far the second longest tenure of any justice. He was handily reconfirmed 12-year term — and by the beginning of next year, he will have set the record for the lengthiest service on the court. His career in public service predates his

appointment to the court, including his terms as Attorney General, his role as Executive Secretary to Governor Olson, and service on the superior court bench in Los Angeles.

I have known him since he first hired me out of law school as a young deputy attorney general, and have followed his career on the bench with great admiration. As a justice, I have found him to be an inexhaustible colleague, whose enthusiasm for and interest in the law never wanes — and whose depth of knowledge and vision borne of long experience are irreplaceable assets to the court.

**Justice Mosk:**

As we resume our judicial journey in familiar surroundings, I have been asked to very briefly recite some history that took place in this very courtroom. It is a pleasant task.

I believe we must concede this was a rather mediocre court in the first three decades of the current century. Governor Culbert Olson, though only a four-year chief executive (1939-1943) was able to make a significant difference with his selection to the court of three judicial giants: Phil Gibson, Roger Traynor and Jesse Carter.

Carter held the record for the number of dissents in the history of the court until recently when, to be immodest, according to academics I passed his total.

Phil Gibson as Chief Justice deserves much credit for elevating the reputation of the California Supreme Court to that of the universally accepted outstanding state court in the country.

Gibson achieved this by being a hard taskmaster. I experienced his ire a few times when, as Attorney General, I was called down to his chambers where he criticized the presentation some young deputy of my office had made to his court.

But the outstanding opinions of the Gibson court truly brought the California judiciary into the forefront of the modern era.

Gibson was followed by Roger Traynor as Chief Justice, and at that time I succeeded Traynor as an associate justice. Traynor set a high literary standard for judicial writing. His opinions were short -- mercifully short by today's standard -- but they were skillfully crafted and clearly established the law for the future.

On the Traynor court were Matthew Tobriner, Ray Sullivan, and Ray Peters, brilliant scholars, and Paul Peek and Louis Burke, equally so. Every one was a source for pride in the California judiciary: Thoughtful and capable, and with it, warmly personable.

In 1970 Donald Wright became Chief Justice. I have always felt he never received the recognition his remarkable service deserved. I have never known a judge as open-minded as Don Wright. Not only open-minded but courageous, as his masterful opinion outlawing the death penalty in *People v. Anderson* indicated. (Though the people by initiative immediately repudiated *Anderson*.)

The Wright era was followed by Chief Justice Rose Bird who had the distinction of being the first female member of this court. On the Bird court were Otto Kaus, Allen Broussard, and Joseph Grodin, brilliant scholars all. Kaus particularly had a delightful sense of humor, which he used on occasion.

Chief Justice Bird and associates Grodin and Cruz Reynoso had the misfortune to fall in what was a bitter political campaign. Fortunately there have been no similar successful anti-court campaigns since then. Indeed, soon thereafter Chief Justice Malcolm Lucas and his associates were able to restore equanimity to the judiciary.

This pretty much brings us down to modern days. Whether this court presently enjoys a reputation similar to that earned in the Gibson, Traynor and Wright eras is, of course, a matter of opinion, perhaps debate. But in this familiar courtroom environment we can, with happy contemplation, look back with genuine pride on earlier days -- and in the earnest hope that we can live up to the remarkably high standard and inspiration those great California jurists of the past provided.



**Chief Justice George:**

Thank you Justice Mosk. Our next speaker is Peter Belton, Justice Mosk's supervising research attorney. Peter has been with the court since 1960, when he began as a research attorney for Justice Rey Schauer. Like the justice he serves, Peter is one of the great resources upon which we all rely. His wide knowledge of the law, his grasp of grammar and of esoteric argument alike, and his experience and intelligence, have made him not only an invaluable assistant to Justice Mosk and the entire court, but also a memorable teacher for the scores of annual clerks and externs who flourished and became better lawyers under his tutelage.

Peter also represents the attorneys and other staff members of the court without whom the seven of us could not function. Although their work for the most part goes unrecognized outside the court, it is a vital and essential component of the court's service to the public.

**Peter Belton:**

May it please the Court. Thank you, Chief Justice George, for those kind words and for the privilege of speaking at today's historic event, for myself and on behalf of all Supreme Court staff. Although I go back almost 40 years with the court, I don't *quite* go back to the turn of the century, so I can't *personally* vouch for the authenticity of this restoration. But I can and do join with you in praising it: this is indeed a beautiful room. I've been to oral argument in the courtroom of the United States Supreme Court. Their courtroom is certainly impressive, but it's also cold, austere, and intimidating—it has marble walls, a marble floor, and a big, dark curtain behind the bench. This room is much warmer, more colorful, friendlier, more human in scale. It's easy to feel at home in this handsome setting. We're all looking forward to holding argument here.

But before we begin, we should look back one last time to those whose presence graced this same room decades ago—those who, as Justice Mosk said, first gave the court the high reputation it has today. As I return to this room after eight years away from it, I'm struck by how much I still feel their presence here. One person comes to mind immediately. His name may not be known to new staff attorneys or even to new justices, but the court wouldn't have been the same without him. I refer of course to Don Barrett. Don was the senior attorney for Justice Traynor from 1948 until Traynor retired in 1970. The court then appointed him principal attorney for the whole court, a position created specially for him, and he remained our principal attorney until his retirement in 1981.

Just as Alba Witkin may feel she's speaking for our beloved Bernie, I feel I'm speaking for Don; he passed away last year, or he would certainly have been with us today. Those of us who worked here in the 60's and 70's remember Don as a quiet but profound legal scholar, much like his mentor and friend Roger Traynor. Don had an encyclopedic knowledge of both procedural and substantive law, and he was always ready to share it with a staff attorney in need. I know Justice Mosk will not be surprised if I now confess that some of my best leads in working on cases for him came from Don Barrett: when time was short, the temptation was always to "ask Don"—it was faster than doing the research, but just as reliable.

And this room especially reminds me of Don: he came to *every* oral argument—he always sat over there, in the back row. Afterwards, he would drop in on the staff attorneys who had worked on cases argued that day, and review the argument with them, suggesting how the court might respond to it in its opinion. We looked forward to those visits.

Finally, as Justice Mosk will remember, the court as a whole often called on Don to undertake special projects, to draft new policies, or, in times of crisis—and we had some good ones—to examine whatever problem the court was facing and come up with a practical solution. He was an invaluable resource for us all.

Justice Mosk has spoken of three great Chief Justices who held arguments in this room in the 60's and 70's. I'd like to add a few memories of my own from those arguments. First, I remember how Chief Justice Gibson would deal with any lawyer—however famous—who was beginning to repeat himself: the Chief would say in a firm tone: "Counsel, we understand all the points you've raised—and unless you have any further points, you might want to consider submitting the matter." It was the wise lawyer who took the hint and quickly sat down. The foolish lawyer kept on talking, with the effect you can imagine on his client's chances.

Next, I remember how Chief Justice Traynor would deal with the same kind of repetitious speaker--and it won't surprise anyone who remembers the shy and gentle scholar that was Roger Traynor. His method was less direct, less confrontational, than Phil Gibson's, but it was no less effective. He would say, in his usual softspoken voice: "Counsel, as I understand your argument, it's this." Then he would summarize counsel's argument in his own words, clearly and thoroughly, often making it sound better than it really was. Finally, he would ask, "Do I have it right?" Again it was the wise lawyer who took the hint, and spoke

the magic words—“Your Honor, I couldn’t have said it better myself”—and sat down. The foolish lawyer said, “No, your Honor, what I meant to say was . . .,” and launched into yet another repetition of the same argument, all the while scoring points for his opponent.

My memory of Chief Justice Wright was a little different. I agree with Justice Mosk that he was both open-minded and courageous. But at oral argument, I remember him most for being patient, courteous, and very considerate of counsel. In fact, the more nervous counsel was, the more considerate was Donald Wright. On more than one occasion I remember him helping a nervous or intimidated lawyer over a rough spot: the Chief might quietly rephrase a colleague’s question in simpler terms, or explain what a colleague was driving at, or give the lawyer a few extra moments to collect his thoughts and come up with an answer. To use an old-fashioned phrase, Donald Wright was a prince of a fellow.

Finally, although he never became Chief Justice, I remember Ray Peters. Who could forget him? In private he was a warm and friendly man, genuinely concerned for the well-being of the staff. In the courtroom he was always willing to listen carefully to any rational argument. But—as quite a few lawyers found out to their sorrow—Justice Peters did not suffer fools gladly. Because of an increasing physical disability, he would usually slump back in his chair; and because his stature was short, he would almost disappear from counsel’s sight. But every now and then, if counsel took a highly dubious position in his argument, Justice Peters would rear up, lunge forward in his chair, fix counsel with a baleful eye, and, taking counsel’s argument to its logical conclusion, would growl in his gravelly voice, “Counsel, do you mean to tell us that . . .” Again, only foolhardy counsel would persist in the face of that challenge.

I’ll close, if I may, by recalling two oral arguments that were notable precisely because they were *not* presented by counsel, but by the litigant in propria persona. These were rare events: the court has always been very reluctant—as it should be—to allow parties to appear and argue “in pro. per.” The risks are obvious. But on these two occasions all went well, to everyone’s great relief.

I recently spoke about the first of these pro. per. arguments at an event attended by Justice Werdegarr; I now ask her to bear with me while I repeat the story in a shorter form for this distinguished audience. A good story is worth telling twice.

The case was that of Paulo Raffaelli, a young Italian man who immigrated to California intending to make his home here. He entered San Jose State University and graduated with a bachelor's degree. He entered Santa Clara Law School and graduated with a law degree. He passed the bar exam on his first try. He was hired as a law clerk by a California law firm. He married an American woman, and had the legal status of a permanent resident alien.

But the Committee of Bar Examiners refused to admit him to the bar on the sole ground that he was not a U.S. citizen: by statute, citizenship was a requirement for practicing law in California. Rather than meekly complying with this requirement, however, Raffaelli chose to "fight it all the way to the Supreme Court": he filed a petition in our court challenging the constitutionality of the statute on equal protection grounds.

When oral argument was scheduled, Raffaelli asked permission to represent himself. His original petition had been well written, and the court allowed him to proceed in pro. per. On the day of oral argument, however, some of us began to wonder if he could pull it off. The courtroom filled up. Soon after Raffaelli began his argument, it became obvious to everyone in the room that his entire presentation was a speech he had written out and memorized. The minutes rolled by, but no Justice interrupted with the customary questioning; it seemed no one wanted to risk making him lose the thread of his story. Finally, Justice Peters—who else?—could stand it no longer. Saying, "Counsel, I'm sorry to interrupt you, but I do have a question," he proceeded to ask it. We all looked at Raffaelli and held our collective breath: would this be his undoing? Not to worry: he calmly answered the question, then picked up his argument where he had left off, without missing a beat. There were no more questions. If Raffaelli's purpose was to show the court he was capable of talking like a lawyer, it certainly had that effect.

While this was going on, the representative of the State Bar sitting at the counsel table was looking more and more uncomfortable. When Raffaelli finished, none of us in the room could imagine how the State Bar representative could justify excluding him from practice. Neither, apparently, could the State Bar representative: instead of presenting his own argument, he rose halfway from his chair, muttered that if the court had no questions he would submit the matter, and quickly sat down again. The argument was over. Soon afterwards, the court struck down the statute as unconstitutional and ordered the State Bar to admit Raffaelli to practice.

The other pro. per. argument I want to tell you about was the case of Helen Perez. Justice Mosk will remember her as “the lady who had no garbage”; he has always admired her spunk.

The facts were simple. The City of San Bruno sent each of its residents a single monthly bill covering three different municipal utilities: water service, sewer service, and garbage collection. A city ordinance provided that if a resident failed to pay for any one of these services, the resident’s water would be shut off.

Mrs. Perez, a resident of San Bruno, was apparently a recycling pioneer. Long before it was fashionable, she began using sanitary recycling techniques to dispose of 100 percent of the garbage she produced. Having done so, she saw no reason to pay for that portion of her city utility bill that represented a fee for garbage collection. When she explained this to city officials, however, they insisted on payment anyway. And when she withheld payment, the officials cut off her water supply. Rather than meekly complying with the ordinance, however, Mrs. Perez undertook to “fight City Hall.” Claiming the penalty was unduly harsh and disproportionate, she sued for damages for violation of her due process rights. The trial court dismissed the action on the city’s demurrer, and this court took up the case.

Not surprisingly, Mrs. Perez represented herself throughout the entire litigation. We surmised she did so partly to save money—she was a widow living on a modest income—and partly because she was too proud and independent to ask a stranger to fight her battles for her. This court gave her permission to argue her own case, and we all showed up to watch.

Mrs. Perez turned out to be a trim, gray-haired lady in a tweed suit and sturdy, no-nonsense shoes, radiating sincerity and self-confidence. She was not an almost-lawyer like Raffaelli, but her argument made up in earnestness—even enthusiasm—what it lacked in legal analysis. She told the court in detail how and why she recycled every scrap of her garbage, how unreasonable and insensitive were the city officials who hounded her to pay for a service she didn’t use, and how unfair it was to cut off her water in reprisal. Like Raffaelli, she succeeded in painting herself as the hapless victim of an arbitrary and oppressive bureaucracy. Her performance showed what a pro. per. argument can be.

Regrettably, the outcome was different from the Raffaelli case. By a four-to-three vote the court affirmed the judgment dismissing her suit—and to this day I

can't understand why the swing majority vote was cast by--of all people--Justice Tobriner! But one of the dissents was by Justice Mosk, who concluded with the following thoughts: "Mrs. Perez, who has acted in propria persona throughout these proceedings, has undoubtedly annoyed city officials by insisting that one should not pay for municipal services unneeded and unused. Of such quiet heroics are martyrs born. Two and a half decades ago Mrs. Rosa Parks annoyed the officials of Montgomery, Alabama, simply by insisting that she should not be required to sit in the back of the bus. . . . Just as Mrs. Parks resisted bureaucracy for a principle—and ultimately brought about the end of compulsory segregation in the south—so Mrs. Perez in apparent splendid solitude is resisting a municipal bureaucracy for a principle. Although the majority fail to see it, I believe due process and justice are her companions."

Let me end with a phrase we've heard too often lately: "Mr. Chairman, I yield the balance of my time to the gentlelady from Berkeley, Ms. Alba Witkin."

Thank you.

**Chief Justice George:**

Thank you Peter. Our final speaker today also holds long and close ties to the Supreme Court. Mrs. Alba Witkin, widow of Bernie Witkin — former law clerk to the Supreme Court, Reporter of Decisions, and unique chronicler of the law of California. Bernie's contributions to the development of the law in our state are unparalleled. Any of you who have ever practiced in another jurisdiction know how fortunate we have been in California to be able to "reach for Witkins" when we are researching a thorny area of the law or want to obtain a cogent overview of a new issue.

Bernie's contributions would not have been possible without the loving support of his wife, Alba, who continues, by the way, to administer a charitable foundation — as she did during Bernie's lifetime — that quietly and effectively makes contributions to a large and wide-ranging number of organizations supportive of the legal system, music, and the rights of citizens.

In addition to the historical artifacts of Chief Justice Searls and Chief Justice Warren I already have mentioned, we are also extremely fortunate that Alba has donated to the court memorabilia from Bernie's career in the law — including early manuscripts of his texts, and the famous typewriter on which he wrote his now multi-volumed treatises. Items from this wonderful donation will be displayed for the public's viewing in the near future.

**Alba Witkin:**

It is an honor to be present with such distinguished speakers this morning. I accepted Chief Justice George's kind invitation to speak to you on this historic occasion, because of the remarkable association of my late husband, Bernie Witkin, with the California Supreme Court for over 65 years -- yes, 65 years, an unprecedented experience.

To begin: Most of you know that Bernie considered his law school years a disaster. The Socratic method of teaching obfuscated the law, he said. It did not present matters clearly for receptive minds.

One of his first acts to counter poor teaching was to produce his clear, concise, and simple Summary of California Law to a receptive audience of eight - eight, because he typed one original and seven copies. That was all one could produce physically by typing in the late 1920's. It was so well received -- and at \$15 a copy -- that he continued to do this, of course not realizing that this first work was the beginning of a remarkable career.

Quick on the heels of this new venture was a short, uneventful stint in a law office, soon followed in 1930 by his noteworthy connection with the California Supreme Court.

A female law clerk (unusual in those days) was leaving -- having been appointed as the first woman judge in San Francisco. Mary Wetmore asked Bernie to step in and take her place as a law clerk to Justice Langdon. And there began Bernie's meteoric and unparalleled rise as a member of the Supreme Court's staff.

Bernie continued to write his law books, because they were so well received, along with carrying on his law clerk's activities.

When Justice Langdon died, Chief Justice Phil Gibson took Bernie on his staff, and a more important involvement in court matters began. Three areas of interest emerged as Bernie gained insight and perspective into the Supreme Court. These he would espouse the rest of his years.

First, he saw the importance of a permanent staff of law clerks to assist the justices. This gave ongoing permanence, scholarship, and competence to the work of the court, which he held could not occur if continual turnover of the staff was adopted.

Second, he saw the court as an institution, as a whole, never as any one or combination of its members. He never retreated from this position. He regarded the court as a great institution fulfilling its role in shaping the common law regardless of the era or its membership.

In his latter years, Bernie vocally and actively held the notion that for a government to be truly democratic, it must have an independent judiciary -- one not beholden to anyone.

Third, he thought that collegiality was essential to the running of the court. Despite different personalities, despite sharp disagreements that could occur, it was essential that the members create an aura of working together *well*, in a collegial fashion, which he considered essential to effective functioning.

Over time, Bernie took on many roles in the Supreme Court structure. He was Reporter of Decisions. Later he had an important role in reviving the Judicial Council and drafting the first Rules on Appeal.

He became an advisory member of the Judicial Council and served in that capacity for over 30 years until his death. His importance in being there was that he could instantly recall and give historical perspective to any matter, which no other member could do.

He knew every justice on the court for 65 years. He knew their frailties and their strengths. Over the years, he was often asked to give a kind of State of the Union speech assessing the justices. He used to say of these descriptions of the members' performances that "he was bound by a self-imposed directive not to be mean or nasty, and a balancing directive not to produce total myth instead of fact." (His words.)



While usually concerned with the big picture, he could also tell many tales of the Court and this building. Like the time a celebration occurred in Chief Justice Phil Gibson's office and the champagne cork flew off with such vengeance that a dent -- or was it a hole -- was forever afterwards in the ceiling. Now, of course, gone with the remodeling.

Or, certainly you've heard of his invention of the box, a box that started with one justice, that then went on to the next containing all the written materials about a case. Now superseded, I understand. But boxes fascinated Bernie. He was surrounded by boxes of all kinds in his large office at home, each labeled and containing information about the law, later assimilated and appearing in his books.

And, did you know that he wrote Chief Justice Phil Gibson's speeches? When Gibson ventured to change what Bernie had written, Bernie thought that was going too far! So, when asked whether a speech was ready as the time for the event was close, Bernie would tell Chief Justice Gibson, "Yes, I'm working on it as hard as ever. It's almost done." Of course, he had finished it days before, locked it in his desk drawer, and was not about to give it up until the last minute when it was too late for Gibson to change Bernie's language.

Bernie was intimately involved in the creation of the Center for Judicial Education and Research, which provides training materials for judges and holds an orientation each summer, now called the B. E. Witkin Judicial College. He knew that a lawyer who donned a black robe had to be taught the art of judging, a shift from the outlook as an adversarial counsel to one who espoused impartiality.

And when state funds were not sufficient to provide needed materials for the judges, he created the Foundation for Judicial Education with his own money, so that materials and benchbooks could be produced and issued to judges to assist them in a practical fashion on the bench. It is not without merit that he is known as the father of judicial education in California.

There was hardly any facet of our judicial system in which Bernie was not interested and did not have a part, including important steps taken to prepare for the future. He was especially impressed with the efforts of Chief Justices Lucas and now Chief Justice George, and the Judicial Council, to make the courts more accessible to the public and to prepare our judicial system for the next century. Of course, I would not venture to predict what Bernie might say if he were here today. But I know he would be pleased to see this great court finally coming home to this new 21st century building.

It is truly a great tribute to Bemie to give me this opportunity to review his intimate and special relationship with the California Supreme Court, which all began on that lucky day in 1930 when he walked through the front door of this building on McAllister Street.

Thank You.

**Chief Justice George:**

Thank you, Alba. It is now time for us to turn to the first oral argument to be held in our newly restored courtroom. You are welcome to stay for the argument, or to take a tour of the courthouse with the docents who are waiting outside to escort you. On behalf of the entire court, thank you for being here today to help us dedicate our new courtroom and to honor the tradition of the Supreme Court and those who have served it in the past. We look forward to seeing you during the reception.

It is ordered that these proceedings be spread in full upon the minutes of the Supreme Court and published in the Official Reports of the opinions of this court.

S067733      Dawnelle Barris, Appellant

v.

County of Los Angeles, Respondent

Cause called. Kenneth M. Sigelman opened argument for Appellant.

Sharon J. Arkin, appearing for Amicus Curiae Consumers for Quality Care, continued argument for Appellant.

Alison M. Turner argued for Respondent.

Mr. Sigelman replied.

Cause submitted.

Court recessed until 2:00 p.m. this date.

Court reconvened pursuant to recess.

Members of the Court and Officers present as first shown.

S064345      People, Respondent  
                 v.  
                 Samuel Martinez, Appellant  
                 Cause called. Jean M. Marinovich, Deputy Attorney General,  
                 argued for Respondent.  
                 Barbara Michel argued for Appellant.  
                 Ms. Marinovich replied.  
                 Cause submitted.

Justice Werdegar, not participating in consideration of the following case, did not take the bench.

The Honorable Nickolas J. Dibiaso, Court of Appeal, Fifth District, sitting on the following case under assignment by the Chairperson of the Judicial Council, joined the Court at the bench.

S066735      Cel-Tech Communications Incorporated et al., Appellants  
                 v.  
                 Los Angeles Cellular Telephone Company, Respondent  
                 Cause called. Charles M. Kagay argued for Appellants.  
                 Robert C. Bonner argued for Respondent.  
                 Mr. Kagay replied.  
                 Cause submitted.

Justice Dibiaso, not participating in the following matters, departs the bench. The Court is joined at the bench by Justice Werdegar. All other officers were present as before shown.

S063512      People, Respondent  
                 v.  
                 John David Williams, Appellant  
                 Cause called. Laura G. Shaefer argued for Appellant.  
                 Harry Joseph Colombo, Supervising Deputy Attorney General,  
                 argued for Respondent.  
                 Ms. Shaefer replied.  
                 Cause submitted.

Court adjourned.

S032146 People, Respondent

v.

Joseph Danks, Appellant

On application of appellant and good cause appearing, it is ordered that the appellant is granted to and including March 9, 1999, to request correction of the record on appeal. Counsel for appellant is ordered to notify the Clerk of the Supreme Court in writing as soon as the act as to which the Court has granted an extension of time has been completed.

S067887 In re Stephen Louis Mitcham

on

Habeas Corpus

On application of petitioner and good cause appearing, it is ordered that the time to serve and file petitioner's reply to informal response to the petition for writ of habeas corpus is extended to and including January 29, 1999.